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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

LARRY WALTON,

Defendant and Appellant.

F065018

(Super. Ct. No. F04905796-9)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. James Petrucelli, Judge.

Timothy E. Warriner, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Charles A. French and John G. McLean, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Kane, J., and Poochigian, J.

After a court trial on a petition for extended involuntary treatment pursuant to Penal Code section 2970, appellant Larry Walton was recommitted to Atascadero State Hospital (ASH) for one additional year.¹ The trial court ordered the commitment period to run until May 7, 2013, one year from the date of the verdict. Walton and the Attorney General agree, however, that his commitment period should end March 29, 2013, one year from the date of termination of his previous commitment.

We agree with the parties and, accordingly, direct the trial court to correct its recommitment order to reflect an end date of March 29, 2013.

FACTUAL AND PROCEDURAL HISTORIES

On November 14, 2005, Walton pled guilty to assault resulting in great bodily injury. On September 25, 2006, Walton was sentenced to state prison. He was released on parole in June 2010, violated parole, and was returned to prison. On November 5, 2010, a petition for extended involuntary treatment pursuant to section 2970 was filed. On March 4, 2011, the jury found the petition to be true and Walton was committed to ASH until March 29, 2012. (*People v. Walton* (Sept. 17, 2012, F062092) [nonpub. opn.], p. 2.)

On March 28, 2012, the Fresno County District Attorney filed a petition for extended involuntary treatment pursuant to section 2970. Walton waived his right to a jury trial. A one-day court trial was held on May 7, 2012; the same day, the trial court stated its findings: Walton had a severe mental disorder; his severe mental disorder was not in remission and could not be kept in remission if his treatment were not continued; and by reason of his severe mental disorder, Walton represented a substantial danger of physical harm to others. The court extended Walton's commitment and treatment at ASH for a period of one year.

¹Subsequent statutory references are to the Penal Code.

In an order filed May 7, 2012 and titled “Order After Verdict of Treatment and Transportation Pursuant to Penal Code § 2970,” the court ordered Walton to “continue treatment under the direction of the Medical Director of [ASH] for an additional one year, until May 7th, 2013, pursuant to Penal Code § 2970.”

Walton filed a notice of appeal on May 22, 2012.

DISCUSSION

“Sections 2970 and 2972 set forth the procedures for continuing the involuntary treatment of a mentally disordered offender after the termination of his or her parole or release from prison. Section 2970 states, in pertinent part, that upon the recommendation of the state hospital or community program treating a person whose parole or prison term is set to expire, the district attorney may file a petition to extend the person’s involuntary commitment for an additional one-year term.” (*People v. Rish* (2008) 163 Cal.App.4th 1370, 1381-1382.) “Section 2972 in turn specifies the procedures for considering a section 2970 petition.” (*Id.* at p. 1382.)

Specifically, section 2972, subdivision (c), provides:

“If the court or jury finds that the patient has a severe mental disorder, that the patient’s severe mental disorder is not in remission or cannot be kept in remission without treatment, and that by reason of his or her severe mental disorder, the patient represents a substantial danger of physical harm to others, the court shall order the patient recommitted to the facility in which the patient was confined at the time the petition was filed, or recommitted to the outpatient program in which he or she was being treated at the time the petition was filed, or committed to the State Department of State Hospitals if the person was in prison. *The commitment shall be for a period of one year from the date of termination of parole or a previous commitment or the scheduled date of release from prison as specified in Section 2970. Time spent on outpatient status, except when placed in a locked facility at the direction of the outpatient supervisor, shall not count as actual custody and shall not be credited toward the person’s maximum term of commitment or toward the person’s term of extended commitment.*” (Italics added.)

Here, Walton’s previous commitment was scheduled to end on March 29, 2012. After finding the allegations of the petition for extended involuntary treatment true, the

trial court was authorized to order recommitment “for a period of one year from the date of termination of ... [his] previous commitment” (§ 2972, subd. (c).) Thus, the court was authorized to order a recommitment period terminating on March 29, 2013. The court erred by ordering Walton’s recommitment period to run until the later date of May 7, 2013.

Since the trial court’s order was unauthorized by law, it is subject to review even though the issue was not raised at trial. (*People v. Mustafaa* (1994) 22 Cal.App.4th 1305, 1311.)

DISPOSITION

The matter is remanded to the trial court, which is directed to correct its recommitment order to reflect a termination date of March 29, 2013.